IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7285 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

FIROJ ABDUL KADIR PATHAN

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7285 of 2001

MS SUBHADRA G PATEL for Petitioner No. 1

MRS HANSA PUNANI AGP for Respondents No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/12/2001

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 16/5/2001 passed by the

Police Commissioner, Surat City and he has been declared as bootlegger.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the solitary offence registered against the detenu before South Zone Prohibition Station vide CR No.692 of 2001 for the offence punishable under Sections 66(1)(B), 65(E), 65(A), 81 and 116(B) of Prohibition Act. The said offence was registered on 11/3/2001 and the detaining authority has passed the detention order on 16/5/2001. Thus, there is a delay of more than two months in passing the detention order. Learned AGP has fairly admitted the same. Learned advocate for the petitioner has also stated that only one offence has been registered under the Prohibition Act and, therefore, petitioner is not habitual offender. He has relied upon a judgment delivered by this Court reported in 1997(1) G.L.H. page 381 in the case of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City and Ors. more particularly at para 21 which reads as under:

> "There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S. Ramamurthy reported in 1993(2) Suppl. SCC 61."

4. It appears that last offence is registered against the detenu on 27/3/2001 and the order of detention was passed on 16/5/2001 on the basis of this offence and hence, there is a delay of more than two months in passing the order. No affidavit has been filed either by the detaining authority explaining

satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

5. In view of the above, the petition is allowed. The order of detention dated 16/5/2001 passed against the detenu is hereby quashed and set aside. The detenu namely Firoz Abdul Kadir Pathan is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

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